



U.S. Department  
of Transportation

**Federal Highway  
Administration**

# Memorandum

Subject: **INFORMATION: Innovative Finance Provisions  
of the National Highway System Designation  
Act of 1995 (the NHS Act)**

Date May 17, 1996

From Executive Director

Reply to  
Att: HFS-40

To  
Associate Administrators  
Staff Office Directors  
Director, ITS Joint Program Office  
Regional Administrators  
Division Administrators  
Federal Lands Highway Program Administrator

For the past two years, we have been involved in a cooperative effort with State and local governments, toll authorities, and private companies to implement new strategies for financing transportation projects. The return on that effort came sooner than we expected with the passage of the NHS Act. The Act added five key financing provisions to title 23, United States Code which had been shown to be valuable tools in our innovative finance projects. (The Act also included a pilot program for State Infrastructure Banks. Information on the pilot program is available from HPP-20.)

Attached is the implementing guidance on the five Title 23 provisions:

- Section 308 - Advance Construction of Federal-aid Projects
- Section 311 - Payment to States for Bond and Other Debt Instrument Financing
- Section 313(a) - Toll Facilities Under Section 129(a) of Title 23
- Section 313(b) - Loan Provisions Under Section 129(a)(7) of Title 23
- Section 322 - Donations of Funds, Materials, or Services for Federally Assisted Projects

You are to be commended for your work on innovative financing. It has and will continue to produce results. Now, I challenge you to implement these new financing provisions by encouraging the States and the local governments to take full advantage of the flexibility they offer.

Headquarters staff is available to assist you as noted in the implementing guidance. Let me know if there are any other ways in which we can help you in implementing the Act.

  
Anthony R. Kane

Attachments

May 10, 1996

**GUIDANCE ON SECTION 322 OF THE NHS ACT  
THIRD PARTY DONATIONS OF FUNDS, MATERIALS, OR SERVICES  
FOR FEDERALLY ASSISTED PROJECTS**

**NHS Act Provision**

The NHS Act amended 23 U.S.C. 323 to allow donated funds, materials, and services to be used as the State's matching share. Section 323 previously limited eligible donations to real property.

**Eligible Donations**

These guidelines only apply to third party donations of funds, materials, and services. Third parties may include an individual, company, association, etc., but do not include a Federal, State, or local government agency.

Donations must be made by the third party after the date the project is approved by FHWA and prior to approval of the final voucher. No donations are eligible prior to the date of the NHS Act, November 28, 1995. Donated materials and services must meet the eligibility requirements of the project.

Eligible donations may be applied to the State's matching share of the project on which the donation was made. Donations cannot be used to revise matching shares on unrelated projects. At no time may the Federal share of costs exceed the total project costs actually incurred by the State. If donations exceed the State's share, the excess will be used to reduce the remaining project cost. If cost overruns occur, any excess donations previously used to reduce the remaining project cost, may be used to satisfy the State's matching share of the cost overruns.

**Federal Funds Used as Matching**

In a few cases, Federal funds with specific legislative authority may be used to match other Federal funds. The following Federal funds may be used to match Federal-aid highway funds:

- o State and Local Assistance Act (P.L. 92-512)
- o HUD Community Development Block Grants (P.L. 93-383)
- o Public Works Employment Act of 1976 (P.L. 94-369)
- o Delaware and Lehigh Navigation Canal National Heritage Corridor Act of 1988 (P.L. 100-692).

### **Documentation**

Donations applied to the State's matching share must be documented. Records must show how the value placed on in-kind materials and services was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization used to support the allocability of regular personnel cost, i.e., time sheets, time cards, etc. (This is reiterated in OMB Circular A-87, Attachment B Section 11(I) Donated Services and 29 CFR 18.24.)

### **Valuation of Donations**

Donated materials and services will be valued at their market value at the time of the donation. Donated services may include labor, equipment, and costs related to providing the service. Donated labor will be valued at rates consistent with those ordinarily paid for similar work in the donor's organization. If the donor does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in that location. Equipment will be valued at the fair market rental value or reasonable use rates.

[Questions relating to this guidance should be directed to Max Inman, Office of Fiscal Services, at 202-366-2853.]